

[Cite as *State v. Robinson*, 2018-Ohio-285.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105667

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CHARLES D. ROBINSON**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-16-610102-A

**BEFORE:** S. Gallagher, J., Boyle, P.J., and Jones, J.

**RELEASED AND JOURNALIZED:** January 25, 2018

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SEAN C. GALLAGHER, J.:

{¶1} Charles Robinson appeals his convictions for having a weapon while under disability and drug possession, which included a firearm specification. We affirm.

{¶2} Robinson sold drugs from his residence. Police officers initiated three separate controlled buys from Robinson. Based on the investigation, a search warrant for Robinson's home was issued. In executing the warrant, police officers found two electronic scales and a firearm. Trace amounts of drug residue were discovered on the scales after chemical testing. Robinson expressly claimed ownership of the firearm, admitted he was aware of his disability that precluded such ownership, and admitted he used the scales to weigh spices in the kitchen. Police officers had notified Robinson of his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), before the admissions. Testimony introduced at trial demonstrates that Robinson affirmatively understood his rights.

{¶3} Robinson's girlfriend, who had two children living with her and Robinson, was present when officers executed the warrant. She was also detained during the search and was upset by the fact that the firearm was found in the home; however, she did not testify at trial.

{¶4} At trial, the state presented a letter addressed to a Charles B. Robinson that was found in the home. In this appeal, Robinson, whose legal name is Charles D. Robinson, refers to the letter as evidence that he was not the owner of the home or its

contents. The letter, however, was excluded from evidence upon Robinson's motion. It cannot be considered in this appeal.

{¶5} Robinson was found guilty of having a weapon while under disability in violation R.C. 2923.13(A)(3),<sup>1</sup> and drug possession in violation of R.C. 2925.11(A). The drug possession count included a one-year firearm specification under R.C. 2941.141(A). Robinson was sentenced to 12 months on the weapons count, 9 months on the drug possession count to be served concurrent to the weapons charge, and 12 months on the firearm specification to be served consecutive to the drug possession and weapons counts.

{¶6} In the first assignment of error, Robinson contends that his Sixth Amendment right to counsel was violated because the trial court failed to conduct an evidentiary hearing on Robinson's oral motion to appoint new counsel. Robinson had requested a new attorney on the first day of the bench trial.

{¶7} "We review a trial court's decision whether to remove court-appointed counsel for an abuse of discretion." *State v. Pendergrass*, 8th Dist. Cuyahoga No. 104332, 2017-Ohio-2752, ¶ 15, citing *State v. Patterson*, 8th Dist. Cuyahoga No. 100086, 2014-Ohio-1621, ¶ 19. If the motion for new counsel was timely, the trial court is required to determine "whether there had been a complete breakdown in communication between the defendant and his counsel." *State v. Summerlin*, 1st Dist. Hamilton No. C-160539, 2017-Ohio-7625, ¶ 9, citing *State v. Clark*, 1st Dist. Hamilton No. C-020550,

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<sup>1</sup> It is undisputed that Robinson had a previous felony conviction for the purposes of this count.

2003-Ohio-2669, ¶ 7; *State v. Murphy*, 91 Ohio St.3d 516, 2001-Ohio-112, 747 N.E.2d 765; *State v. Gordon*, 149 Ohio App.3d 237, 2002-Ohio-2761, 776 N.E.2d 1135, ¶ 13 (1st Dist.).

{¶8} When timing is an issue, “the trial court may determine whether the defendant’s request for new counsel was made in bad faith.” *Pendergrass* at ¶ 16, citing *State v. Price*, 8th Dist. Cuyahoga No. 100981, 2015-Ohio-411, ¶ 18, and *State v. Graves*, 9th Dist. Lorain No. 98CA007029, 1999 Ohio App. LEXIS 5992 (Dec. 15, 1999). There is a presumption of bad faith that must be overcome if the request for new counsel is made on the day of trial. *Id.*, citing *Price* and *State v. Haberek*, 47 Ohio App.3d 35, 41, 546 N.E.2d 1361 (8th Dist.1988).

{¶9} Robinson claims that the trial court erred because the inquiry into Robinson’s concerns regarding his appointed counsel was cursory and not vetted through a formal evidentiary hearing.

{¶10} Contrary to Robinson’s belief, it has been held that the court’s inquiry into a motion to appoint new counsel may be brief and minimal, and still safeguard the offender’s constitutional rights. *Pendergrass* at ¶ 11, citing *State v. King*, 104 Ohio App.3d 434, 437, 662 N.E.2d 389 (4th Dist.1995). There is no requirement that the trial court undergo a formal or lengthy proceeding every time a defendant requests new appointed counsel. In this respect, Robinson’s argument is without merit. The trial court considered Robinson’s arguments and denied the motion.

{¶11} Further, it is well settled that “an indigent defendant’s right to counsel does not extend to counsel of the defendant’s choice.” *Patterson*, 8th Dist. Cuyahoga No. 100086, 2014-Ohio-1621, ¶ 20, quoting *Thurston v. Maxwell*, 3 Ohio St.2d 92, 93, 209 N.E.2d 204 (1965). The defendant bears the burden of demonstrating grounds for the appointment of new counsel. If a defendant alleges facts that, if true, would require appointment of new counsel, only then must the trial court inquire into the claims and make the inquiry part of the record. *Patterson* at ¶ 18, citing *State v. Deal*, 17 Ohio St.2d 17, 244 N.E.2d 742 (1969).

{¶12} In this case, Robinson expressed concerns regarding his appointed counsel on the first day of trial. In Robinson’s own words, he did not

feel like the communications [are] good here. We’re not even on the same page right now. \* \* \* As far as everything [that’s] going on, just [his] understanding of the case and everything. It’s not really being fully told to me how it’s supposed to be. That’s what the problem is right now. I just don’t think we’re connecting, clicking on the same page and we got the same thing in mind.

Importantly, Robinson did not allege that there was a complete breakdown in communications; instead he relied on vague assertions of less-than-optimal communications after having accepted his attorney’s counsel throughout the pretrial proceedings. *See State v. Cowans*, 87 Ohio St.3d 68, 73, 1999-Ohio-250, 717 N.E.2d 298 (there is not a complete breakdown in communications when defendant relies on his

appointed attorney's advice and recommendations). Robinson's allegations did not demonstrate a complete breakdown in communications before trial, which had already been continued at his request.

{¶13} Nevertheless, the trial court considered Robinson's request to appoint new counsel in light of the continuance and the experience and professionalism of his appointed attorney. The trial court did not abuse its discretion. Robinson's request was presumptively made in bad faith, and even if we reviewed the merits of the motion, Robinson failed to allege facts that if considered true, would demonstrate a complete breakdown in communications. We overrule the first assignment of error.

{¶14} In the second and third assignments of error, Robinson claims that he was deprived of his right to the effective assistance of counsel because his attorney failed to file a motion to suppress the statements Robinson made to police officers confirming his possession of the firearm and items containing the drug residue.<sup>2</sup> Robinson claims his trial counsel's performance was deficient because his statements to police officers would have been suppressed had a motion been filed. Robinson, however, has not demonstrated that he was subjected to a custodial interrogation at the time he admitted to possessing the contraband; and further, evidence established that Robinson was notified and affirmatively understood his rights under *Miranda*.

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<sup>2</sup>Although the third assignment of error is framed in terms of hearsay, Robinson is actually arguing that his admissions to police officers, which are not hearsay under Evid.R. 801(D)(2), were made following an involuntary relinquishment of his constitutional rights. Thus, both assignments of error are pinned to the admissibility of Robinson's statements under *Miranda*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694.

{¶15} In order to substantiate a claim of ineffective assistance of counsel, the appellant must show that (1) counsel’s performance was deficient and (2) the deficient performance prejudiced the defendant so as to deprive him of a fair trial. *State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 98, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Judicial scrutiny of defense counsel’s performance must be highly deferential. *Strickland* at 689. In Ohio, there is a presumption that a properly licensed attorney is competent. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 1999-Ohio-102, 714 N.E.2d 905. The defendant has the burden of proving his counsel rendered ineffective assistance. *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, ¶ 223.

{¶16} Generally speaking, “[p]olice are not required to administer *Miranda* warnings to everyone whom they question.” *State v. Biros*, 78 Ohio St.3d 426, 440, 1997-Ohio-204, 678 N.E.2d 891, citing *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977). “Only custodial interrogation triggers the need for *Miranda* warnings.” *Id.*; *State v. Hoffner*, 102 Ohio St.3d 358, 2004-Ohio-3430, 811 N.E.2d 48, ¶ 26 (“a coercive environment does not automatically convert a noncustodial situation into one requiring *Miranda* warnings”). The fact that individuals or actual suspects are detained during the execution of a search warrant, in and of itself, does not transform police questioning into a custodial interrogation. *Hoffner* at ¶ 28-30. There must be additional facts demonstrating the custodial nature of the interrogation. Determining

whether the questioning rises to the level of being a custodial interrogation is generally a fact-dependent inquiry.

{¶17} While executing a lawful search warrant, police officers are permitted to restrict the defendant's movement. *Id.* Police officers are entitled to do so in order to secure the location and search the area for weapons and the evidence identified in the warrant. *Id.* Accordingly, a defendant is not necessarily "in custody" for *Miranda* purposes solely because he is briefly detained while the police execute the search warrant. *Id.* Police officers are, among other things, entitled to discuss the nature of the search warrant and make inquiries into the scope of that warrant without violating the offender's constitutional rights. *Id.* Further, a police officer's "[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected" by the Supreme Court's decision in *Miranda*, 384 U.S. at 477, 86 S.Ct. 1602, 16 L.Ed.2d 694. *Id.*

{¶18} Robinson failed to introduce evidence contradicting the trial testimony demonstrating that he acknowledged his rights under *Miranda*. Tr. 77:1-7. Even if we ignore that testimony and presume that Robinson was not notified or did not acknowledge his rights, nothing in the record demonstrates that Robinson was "in custody" at the time he volunteered the information in response to a police officer's questions. Robinson was detained and answered general on-the-scene questions as to the facts surrounding the search of the home. As a result, it cannot be demonstrated that trial counsel was ineffective for failing to file a motion to suppress in this case — there is no support in the

record or in the law for such a motion. Robinson's second and third assignments of error are overruled.

{¶19} In the fourth and final assignment of error, Robinson claims that his convictions are not supported by sufficient evidence. Although Robinson's assignment of error claims to challenge his conviction as being against the manifest weight of the evidence, he only discusses the sufficiency of the evidence. We will limit our discussion accordingly. We find no merit to the final assignment of error.

{¶20} A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing a sufficiency challenge, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶21} The sole argument presented for our resolution under the fourth assignment of error is that Robinson cannot be found guilty of "directly" or "actually" possessing the weapon or the drug residue. Even if we disregarded Robinson's statements to the officers admitting his possession of the items containing drug residue and the firearm that supported both convictions, the state need not demonstrate actual possession in order to satisfy its burden of proof. In fact, in the alternative to Robinson's admissions, the trial

court considered whether Robinson constructively possessed the items. Tr. 112:1-8. Robinson does not challenge that consideration.

{¶22} Both of Robinson's convictions, including the associated firearm specification, require that Robinson possessed the drugs and the firearm and had the firearm on or about his person during the commission of the crime. R.C. 2941.141(A); R.C. 2925.11(A); R.C. 2923.13(A)(3). "The possession of drugs can be actual or constructive." *State v. Ball*, 8th Dist. Cuyahoga No. 99990, 2014-Ohio-1060, ¶ 37-41, citing *State v. Dillard*, 173 Ohio App.3d 373, 2007-Ohio-5651, 878 N.E.2d 694, ¶ 53 (2d Dist.). Similarly, "the state may demonstrate an individual has dominion and control over the firearm by proving constructive possession of the firearm." *State v. Carson*, 8th Dist. Cuyahoga No. 104998, 2017-Ohio-7243, ¶ 17, citing *State v. Easterly*, 8th Dist. Cuyahoga No. 94797, 2011-Ohio-215, ¶ 24, citing *State v. Davis*, 8th Dist. Cuyahoga No. 93844, 2010-Ohio-5123; *State v. Wilkins*, 12th Dist. Clinton No. CA2007-03-007, 2008-Ohio-2739; *State v. Conway*, 8th Dist. Cuyahoga No. 86140, 2005-Ohio-6634. The state was not required to prove that Robinson directly or actually possessed the firearm or drug residue to prove every element of the crimes beyond a reasonable doubt.

{¶23} In light of the fact that Robinson has not presented any arguments with respect to his having constructive possession of the contraband, and in consideration of the statements Robinson made to police officers confirming his possession of the items, the state presented sufficient evidence to support Robinson's convictions.

{¶24} We affirm.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and  
LARRY A. JONES, SR., J., CONCUR